

M/045/022

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA

Plaintiff

vs.

MAGNESIUM CORPORATION OF
AMERICA and the STATE OF UTAH

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* Case No. 2:98CV00281C
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* **STIPULATION OF DISMISSAL**
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* Defendants
*

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STATEMENT

1. The United States of America and the State of Utah enter into this Stipulation to resolve the dispute between them and to clarify the meaning of the terms of Paragraph 14, contained in Exhibit E to the Right-of-Way Grant No. U-54155, dated June 21, 1986, between the State of Utah and the United States Bureau of Land Management. This Stipulation pertains to those federal lands described in Right-of-Way Grant No. U-54155. The Right-of-Way Grant allows the use of certain federal lands in the West Desert, Box Elder and Tooele Counties, Utah for installation by the State of Utah of a pumping plant, intake canal and dike, outlet canal, retention dike and other facilities to pump water from the Great Salt Lake into the West Desert (the West Desert Pumping Project), thereby increasing the surface area of the water and the amount of evaporation. The purpose of the project was to lower the water level in Great Salt Lake through enhanced evaporation to address the emergency caused by unusually high levels that had caused extensive property damage along the margins of the Lake.

2. Attached to the Right-of-Way Grant was Exhibit E, "Stipulations," which contained the following paragraph 14, which the parties hereto wish to clarify:

14. All minerals deposited or precipitated in any way from the waters occupying the public lands within this right-of-way shall become the property of the United States and be administered by the Bureau of Land Management at the termination of this right-of-way grant.

The holder may not authorize the creation of any additional dikes, berms or impoundments of any kind within the limits of this right-of-way for any purpose including, but not limited to, the concentrating of brine water for the ultimate purpose of mineral extraction. Any third party wishing to construct any such impoundments must obtain advance approval from the holder prior to applying to the Bureau of Land Management under applicable law for the authorization of such purpose.

3. On April 21, 1998, the United States sued Magnesium Corporation of America (MagCorp) in trespass and conversion of minerals underlying federal lands in the West Desert, Tooele County, Utah. The United States later joined as a defendant the State of Utah because the State, relying solely upon Paragraph 14 of the Right-of-Way grant, claimed ownership of the minerals within the Right-of-Way, including all minerals produced by MagCorp at its Knolls facility, also located on federal lands and the subject of a separate Right-of-Way with MagCorp.

STIPULATION

4. The State of Utah and the United States agree to settle their respective claims to ownership of the minerals on and under federal lands described in Right-of-Way Grant No. U-54155, and stipulate to dismissal of the claims against the State of Utah on the following terms:

A. The United States has at all times owned all minerals contained in the groundwater located within the lands described in the Right-of-Way, and all minerals contained in surface water derived from the groundwater on or underlying the federal lands, including all minerals from the Great Salt Lake brines introduced by the State of Utah into the West Desert through the West Desert Pumping Project which infiltrated the subsurface of the federal lands. The United States, through the Bureau of Land Management, retains all authority under existing law to manage the surface and subsurface of the federal lands as described in, and subject to the Right-of-Way Grant No. U-54155.

B. Under Paragraph 14 of the Stipulations to the Right-of-way Grant, the State of Utah has title to the surface precipitates resulting from evaporation of Great Salt Lake brines introduced into the West Desert on the land described in the Right-of-Way during the operation of the West Desert Pumping Project, from April 15, 1987 through June 30, 1989. The State's title is

for the sole purpose of re-dissolving and flushing of such surface precipitates from the West Desert into the Great Salt Lake by the resumption of pumping of the West Desert Pumping Project facilities in the event of another flood emergency or by means of direct precipitation and/or surface runoff from precipitation events and resulting mobilization of surface precipitates. The State waives all claims or interests in mining, excavating, or other extraction of the surface precipitates existing on federal lands on the West Desert. Ownership of all surface precipitates resulting from operation of the West Desert Pumping Project that remain on federal lands at the termination of the Right-of-Way Grant shall vest in the United States. This paragraph 4B does not limit the State of Utah and the United States from agreeing to operations relative to the surface precipitates on the Right-of-Way Grant No. U-54155 during its remaining term.

C. The United States may continue its claims against MagCorp for the full value of all minerals the United States owns or asserts title to that are or were processed by MagCorp, without interference or objection from the State of Utah.

D. The State of Utah will not make any claim against the United States for such amounts as the United States may recover from MagCorp as a consequence of this or other litigation.

Other Representations

5. The parties to this Agreement represent and warrant as follows:

A. The parties affirm that the representatives executing the Agreement are empowered to do so and thereby bind the respective parties, and that there is no other condition to be satisfied or approval to be secured from any governmental or quasi-governmental agency or body in order to execute this Agreement;

B. Each party affirms its present competence to enter into the settlement provided

for in this Agreement, with respect to the advisability of executing this Agreement, and with respect to its meaning;

C. Each party affirms that, as of the effective date of this Agreement, each has not previously assigned or transferred in any manner, or purported to have assigned or transferred in any manner, any of the claims set forth in this Agreement;

D. No party is relying upon any statement, representation or promise of any other party or any officer, director, agent, partner, employee, consultant, representative or attorney of or for any other party in executing this Agreement or in making the settlement provided for, except as expressly stated in this Agreement and admissible to interpret the Agreement.

6. This Agreement is an integrated agreement and constitutes the entire Agreement between the parties and supersedes all prior and contemporaneous oral and written agreements and discussions.

7. This Agreement may be modified only by a writing executed by the parties to this Agreement against whom enforcement of such modification is sought.

8. Each party to this Agreement and its counsel have reviewed and revised this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

9. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to

which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this Agreement.

10. Each party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement.

11. Time and strict punctual performance are of the essence with respect to each provision of this Agreement.

12. The headings of the paragraphs of this Agreement have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement, or be used in any manner in the interpretation of this Agreement.

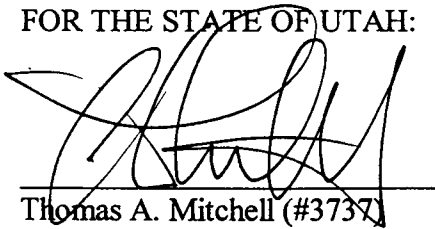
13. This Agreement shall become effective when it has been executed by all of the parties, approved by the Court and the claims against the State of Utah are dismissed.

Stipulation of Dismissal

14. Based upon these representations and stipulations, the United States and the State of Utah hereby stipulate to dismissal of all claims by the United States against the State of Utah in this proceeding, each party to bear its own costs.

DATED: September 7, 2000.

FOR THE STATE OF UTAH:

A handwritten signature in black ink, appearing to read 'Tom Mitchell', written over a horizontal line.

Thomas A. Mitchell (#3737)

Assistant Attorney General, State of Utah
160 East 300 South, 5th Floor, P.O. Box 140857
Salt Lake City, UT 84114-0857

FOR THE UNITED STATES OF AMERICA:

A handwritten signature in black ink, appearing to read 'Andrew F. Walch', written over a horizontal line.

Andrew F. Walch, Senior Counsel
United States Department of Justice
999 - 18th Street, Suite 945
Denver, CO 80202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STIPULATION OF DISMISSAL was via sent facsimile and by United States mail the _____ day of September, 2000, to the following:

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